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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

APPLE LAKE ESTATES PROPERTY OWNERSHIP

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Jane M. Price
HARRISON COUNTY RECORDER

This Instrument Prepared by:
Raymond Good, 7201-49
SCHNORR, GOOD & SCAHILL
144 N. Delaware Street
Indianapolis, IN 46204-2551
317/264-3636

762

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**DECLARATION OF COVENANTS AND RESTRICTIONS OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP**

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James W. O'Brien
MANAGING PROPERTY REPRESENTATIVE

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Gene D. [Signature]
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HARDOCK COUNTY RECORDER

(iv)

**DECLARATION OF COVENANTS AND RESTRICTIONS OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP**

Revision 2

THIS DECLARATION made this 15TH day of SEPTEMBER, 1995, by COMMUNITY DEVELOPMENT III, INC., an Indiana Corporation (Declarant).

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Hancock County, Indiana, more particularly described in the attached Exhibit "A", which are incorporated herein by reference and is hereinafter referred to as "Project".

B. Declarant by execution of this Declaration assures that all properties which are conveyed by Declarant and which are a part of the "Project" shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the "Project" and be binding upon all parties having any right, title or interest in the "Project", or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- (a) "Applicable Date" means the date determined pursuant to Paragraph 8 of this Declaration.
- (b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.
- (c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (d) "Building" means any one of the potential twenty-one (21) separated structures each of which has two Dwelling Units divided by a party wall as hereinafter defined.
- (e) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of Directors and Officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.
- (f) Common Area. The Common Area shall include all of the real estate described in Exhibit "A" (excluding dedicated right-of-way for public streets within the "Project"), some of which will be hereafter delineated General or Limited Common Area as herein defined. General

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COMMUNITY DEVELOPMENT III, INC.

Common Area refers to those common areas available to all residents, and guest of residents, and owners of Buildings within the "Project". Limited Common Area refers to areas that are limited in use to a specific Building with the "Project". Notwithstanding the above, any use of the Common Areas will be subject to Rules and Regulations herein and as promulgated and enacted by the Board of Directors.

The Common Areas include these highlights:

- Perimeter fence at or near the North, South and West property lines of the Project.

- Lake (Substantially as depicted on the recorded Plat of the Project).

This Lake will provide an aesthetic water component within the project while also serving as a part of the surface water needs of the Project. No representation is made by Declarant as to the water level to be maintained within the Lake. A gazebo type structure will be constructed next to the Lake by the DECLARANT before the Project is completed. The right and limitations of use and maintenance thereof shall be determined by the Association as hereinafter detailed.

- Limited Common Areas

Each platted Lot within the Project shall be designated limited Common Area. The centerline of the party wall within the Building on a given Lot when extended to the property lines of a Lot will, for descriptive and limited use purposes, establish an A & B component to the Building and Lot so that the occupant of the A component of the Building will have exclusive use of the Common Area of the A component of the Lot within the occupant of the B component of the Building having the equivalent exclusive use of the B component of the Lot.

- (g) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and the improvements therein and utilities serving said improvements; the costs of maintaining those portions of the Buildings hereinafter detailed, and all sums logically associated thereto.
- (h) "Corporation" means Apple Lake Estates Homeowners Associations, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 8 of this Declaration; such Corporation being more particularly described in Paragraph 8 of this Declaration.
- (i) "Declarant" shall mean and refer to Community Development III, Inc., an Indiana corporation, its successors and assigns or to whom it designates in one or more written recorded instruments, the rights of Declarant hereunder.
- (j) "Dwelling Unit" means one of the two living units located within a given Building upon a given Lot.
- (k) "Lot" means any plot of ground designated as such upon the recorded Final Plat of the Project.
- (l) "Member" means a member of the Corporation.
- (m) "Mortgagee" means the holder of a first mortgage lien on the Dwelling Unit.

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James H. O'Connell

(n) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Dwelling Unit.

2. Declaration. Declarant hereby expressly declares that the Project or any portion thereof shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of the Project. The Project is comprised of 21 Lots and will ultimately have one Building per Lot and therefore a maximum of 42 Dwelling Units. The Buildings shall be constructed on Limited Common Area. The total of all of the General and Limited Common Area of the Project shall be all of the real estate of the Project less all dedicated right-of-way for the public streets within the Project. The Common Area and the size of the Lots are as designated on the Final Plat of Apple Lake Estates. The legal description for the conveyance of the Building in Apple Lake Estates shall be as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF FOR THE LEGAL DESCRIPTION

4. Ownership of Common Area. Title to the Common Area shall be conveyed to the Corporation at one or more times by the DECLARANT as determined by DECLARANT but in no event later than the transfer of Deed by the DECLARANT to the last of the 21 Buildings, and shall be held by the Corporation for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to each Lot, subject to the provisions of this Declaration and subject to the limitation in use for Limited Common Areas, including but not limited to, the following:

- (a) The right of the Corporation to charge reasonable admission and other fees for use of any facility within the General Common Area.
- (b) The right of the Corporation to suspend any Member from the right to use any facility within the General Common Area for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.
- (c) The right of the Corporation, upon approval by a written instrument signed by two-thirds (2/3) of all Class A Members, two-thirds (2/3) of all Class B Members, and by two-thirds (2/3) of all first mortgagees, to dedicate or transfer all or any part of the General Common Area to any public agency, authority or utility for such General Common Area purposes and subject to such conditions as may be agreed by the Corporation.

with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement for the Project.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

8. Corporation; Membership; Voting; Functions.

(a) Membership in Corporation. Declarant and each Owner of a Dwelling Unit which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any person who holds the interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A member shall be entitled to one (1) vote for each Dwelling Unit of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Dwelling Unit, all such persons shall be Members of the Corporation, but all of such person shall have only one (1) vote for such Dwelling Unit, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Dwelling Unit.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Corporation. Each Class B Member shall be entitled to four (4) votes for each Dwelling Unit shown on the Final Plat of the Apple Lake Estates Project on all matters requiring a vote of the Members of the Corporation.

THE CLASS B MEMBERSHIP SHALL CEASE AND TERMINATE UPON THE APPLICABLE DATE, WHICH SHALL BE THE FIRST TO OCCUR OF (I) THE DATE UPON WHICH THE WRITTEN RESIGNATION OF THE CLASS B MEMBERS AS SUCH IS DELIVERED TO THE RESIDENT AGENT OF THE CORPORATION, OR (II) THIRTY (30) DAYS AFTER THE DATE WHEN THE TOTAL VOTES OUTSTANDING IN THE CLASS A MEMBERSHIP EQUAL OR EXCEED THE TOTAL VOTES OUTSTANDING IN THE CLASS B MEMBERSHIP.

(c) Functions. The Corporation has been formed for the purpose of providing for the

James W. O'Brien
HANCOCK COUNTY RECORDER

maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

9. **Board of Directors.**

- (a) **Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 9.
- (b) **Initial Board of Directors.** The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: David Bertolet, Mauri Young and James Kellie (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of this Declaration, the Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date or until removed by Declarant who may remove said Board Member without cause, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Dwelling Unit, or by acquisition of any interest in a Dwelling Unit by any type or juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging General Common Area or merger/consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a member of the Corporation nor an Owner of a Dwelling Unit for any other purpose (unless he is actually the Owner of a Dwelling Unit and thereby a Member of the Corporation).
- (c) **Additional Qualifications.** Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one person at a time.
- (d) **Term of Office and Vacancy.** Subject to the provisions of subparagraph (b) of this Paragraph 9, one (1) member of the Board of Directors shall be elected at each annual

meeting of the Corporation. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of one (1) year. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 9 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 9. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

- (e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.
- (f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Project, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of regular and special assessments collected by the Corporation. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%, of the vote and fifty-one percent (51%) of the vote of Mortgagees registered with the Corporation. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:
- (i) maintenance of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards security service or security system;
 - (ii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the General Common Areas, and such exterior portions of the Dwelling Units as hereinafter designated in this Declaration. Maintenance of lawns shall include but shall not be limited to the fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Declarant without any duty to water any such planting. It shall not include the care and maintenance of shrubs, trees which were not planted by Declarant, flowers or other plants within the Limited Common Area of any Lot

unless specifically agreed to by the Architectural Control Committee;

- (iii) maintenance of lawns within Limited Common Areas consisting of two (2) fertilizations per year, shrub trimming of once per year and the cleaning of gutters at least once per year, however, any watering of grass and/or plantings and any reseeded of grass within the Limited Common Areas shall be the responsibility of the Owner to whom the Common Area is limited;
 - (iv) snow removal (but no ice removal) if funding exists, for the removal of snow from driveways and sidewalks and porches to the Dwelling Units within the Limited Common Areas if in the Board's sole determination the accumulation of snow justifies such removal;
 - (v) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
 - (vi) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
 - (vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year;
 - (viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
 - (ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
 - (x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area; and
 - (xi) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, a financial statement for the immediately preceding fiscal year.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (i) to employ a Managing Agent to assist the Board in performing its duties;
 - (ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services a may be necessary in the judgment of the Board of Directors;
 - (iii) to employ legal counsel, architects, contractors, accountants and others as in the

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HAMPDEN COUNTY RECORDS
Jesse W. O'Brien

judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

- (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
 - (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
 - (vi) to open and maintain a bank account or accounts in the name of the Corporation;
 - (vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the General and Limited Common Areas within the Project (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;
 - (viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project known as Apple Lake Estates; and
 - (ix) to enter the Dwelling Unit of any Owner in case of any emergency, whether the Owner is present at the time or not and in the case of non-emergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.
- (h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.
- (i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
 - (ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
 - (iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.
- (i) Compensation. No Director shall receive any compensation for his services as such, except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.
- (j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each

of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relating to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that the may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

10. Initial Management. The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area, and to the extent the same is not otherwise the responsibility of Owners of individual Dwelling Units, the

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maintenance of Dwelling Units and in general perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Project and perform all the functions of the Corporation.

11. **Real Estate Taxes.** Real estate taxes are to be separately assessed for each Dwelling Unit only (excludes Limited Common Area associated with that Dwelling Unit) and taxed to each such Dwelling Unit owner. The General and Limited Common Areas are to be separately assessed from the Dwelling Unit and taxed to the Association. In the event that for any year the real estate taxes are not so separately assessed and instead are taxed as a whole, then each Owner shall pay his proportionate share of the real estate taxes assessed for all of the Dwelling Unit, which shall be the ratio that the square footage that a given Dwelling Unit bears to the total square footage of all of the Dwelling Unit included in the tax statement. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

12. **Utilities.** Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

13. **Maintenance, Repairs and Replacements.** The Owner of each Lot shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs, decorating and replacements within such Owner's residence, including the heating and air conditioning system (consisting of the air conditioner pad, piping, wiring, ductwork, and caulking/repairs to the exit hole(s) in foundation wall), any

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partitions and interior walls; for the maintenance, repair and replacement of all windows in his or her residence, all doors leading into the residence (this shall consist of all entry doors including storm doors, enclosed atrium doors, and the garage door, all door locks, frames, door bells, hinges, hardware, garage door tracks, springs, pulleys, openers and all other pertinent equipment). In addition to the aforementioned maintenance responsibilities the Board of Directors has promulgated rules and regulations which assign the maintenance responsibility of the Limited Common Areas to the Lot Owner as follows: decks and exterior handrails; patio wall dividers, fences and gates; decorative porch, patio, yard and flood lights; telephone cable, television cable, electrical wiring, gas lines, plumbing lines, sump pumps and waterlines; exterior electrical outlet, exterior and interior faucets for hose, concrete garage slab and concrete inside fenced patio area, also the landscaping inside this Limited Common Area and patio.

The Association shall provide exterior maintenance upon the buildings constructed upon the Lots and on the Common Area adjacent thereto as follows: paint, repair, replace, maintain and care for roofs, gutters, downspouts, exterior building surfaces, such exterior building surfaces shall not include windows or glass surfaces (except glass in patio doors UNLESS such glass in the patio doors has been replaced and/or upgraded subsequent to the purchase and skylights) nor shall it include doors and doorways and/or window frames; and other exterior improvements, lawns, shrubs and trees. The Association will remove snow (not ice) from sidewalks and driveways only. Such maintenance shall be provided at regular intervals pursuant to a reasonable schedule to be determined by the Association, and at other times in the case of an emergency. In the event that the need for any such maintenance or repair is caused through the willful or negligent act of the Owner, or his or her family, guests, or invitees, the cost of such maintenance or repairs shall be recoverable through a special assessment added to the Regular Monthly Assessment to which such Lot is subject.

Notwithstanding any obligation or duty of the corporation to repair or maintain any Dwelling Unit or the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and

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in grade, additional landscaping, or other work which in any way alters the exterior of a Dwelling Unit, or the improvements located within the Limited Common Area serving a given Dwelling Unit from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee by the Declarant to any Owner shall be made or done without the prior approval of the Architectural Review Board. Except as otherwise expressly provided in this Declaration, no building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

- (d) Procedures. In the event the Architectural Review board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) has been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3rds) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.
- (e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.
15. Party Walls.
- (a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit within the Project and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.
- (b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.
- (c) Destruction by Fire or other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.
- (d) Weatherproofing. Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) Right of Contribution Runs with Land. The right of any Owner to contribution from any

other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

- (f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 15, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party the Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

16. Assessments.

- (a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

- (b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration, which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion, Hancock and surrounding counties, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based

upon the last approved budget, or at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be the same amount for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget.

- (i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner by first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Dwelling Unit as of the First day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner who has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Dwelling Unit from payment of the Regular Assessment for

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such Dwelling Unit as finally determined, and such Owner and his successor as Owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 17 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

- (d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 9(b) of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.
- (e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is constructing Dwelling Units within the Project, it is difficult to accurately allocate the Common Expenses to the individual Dwelling Unit. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 16(e).

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designed by Declarant) (hereinafter referred to as "Management Agent" or Managing Agent") in accordance with the provisions of Paragraph 10 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that the monthly Regular Assessment prior to the Applicable Date shall not exceed Thirty Dollars (\$30.00) (the "Guaranteed Charge"). The monthly Regular Assessment shall not exceed the amount of Fifty-Five Dollars (\$55.00)/month after the Applicable Date unless revised by an Amendment of this Declaration after the Applicable Date. Such monthly charge shall during the guaranteed period prior to the Applicable Date, entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any operating deficit during the guarantee period prior to the Applicable Date; provided, however, that this guarantee is not intended

to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures shall be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.

That portion of the Regular Assessment collected by Declarant prior to the Applicable date applicable to any replacement reserve created shall be held by the Initial Board and if required, applied to the replacement of Common Areas or those portions of Dwelling Units obligated to be repaired and replaced by the Corporation. To the extent that any such replacement reserve is not so applied, the balance thereof shall be retained by the Corporation at the Applicable Date.

Payment of Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the next calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date. FOR EACH COMPLETED DWELLING UNIT DECLARANT OWNS THAT IS NOT OCCUPIED BY TENANTS OF DECLARANT AND WHICH HAS BEEN MADE SUBJECT TO THIS DECLARATION BY THE RECORDATION OF THE FINAL PLAT, DECLARANT SHALL PAY TO THE MANAGEMENT AGENT TWENTY-FIVE PERCENT (25%) OF THE AMOUNT OF THE REGULAR ASSESSMENT; PROVIDED, HOWEVER, SUCH PAYMENT BY DECLARANT FOR SUCH DWELLING UNIT'S SHALL NOT COMMENCE UNTIL THE DWELLING UNIT IS COMPLETED FOR OCCUPANCY.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 40 of this Declaration and to adhere to and abide by the same.

- (f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments in such event the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. An action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such

assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by NBD Bank, N.A. to its largest and best corporate customer (or if said bank is no longer in existence then such rate charged by another national bank in Marion County, Indiana selected by the Board of Directors). The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

- (g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Dwelling Unit to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Dwelling Unit from which it arose).

17. Mortgages.

- (a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagees shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

- (b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16(b) hereof.

- (c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall

have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.

- (d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Apple Lake Estates or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.
- (e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

18. Insurance.

- (a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insuring all of the Dwelling Units and the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Dwelling Units and Common Area and which includes in said coverage the replacement in the event of casualty of Dwelling Units floor and wall coverings. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damage of all Dwelling Units and Common Area directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall be solely responsible for loss or damage to the contents of his

Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall covers and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere within the Project and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere within the Project. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

- (b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of person and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Project, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.
- (c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.
- (d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notice of meeting of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to such Owners of insurance proceeds or

condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Indiana Not-For-Profit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

(f) Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

10. Casualty of Dwelling Units.

(a) Restoration of Dwelling Units.

(1) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose.

(2) If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

(3) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(4) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

(5) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against the Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

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HARRIS
MEMBER
David D. Harris

- (i) The construction fund shall be disbursed in payment of such costs upon the selection of a general contractor employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The general contractor shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, materialmen, or other persons who have rendered services or furnished materials in connection with the work. (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.
- (ii) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.
- (iii) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing wilful or malicious damage.

(b) Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

20. Covenants and Restrictions (Use & Occupancy Restrictions). The following covenants and restrictions on the use and enjoyment of the Dwelling Units and General and Limited Common Areas shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Corporation. Present or future owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation.

(a) Use Restrictions

- (i) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family per Dwelling Unit.
- (ii) Nothing shall be done or kept in any Dwelling Unit or on the Common Area which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (iii) No nuisance shall be permitted and no waste shall be committed on any Dwelling Unit or the Common Area. The Board of Directors determination as to what is a nuisance shall be conclusive.
- (iv) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Architectural Review Board.
- (v) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner or kept within a fenced area of the Limited Common Area associated with a particular Dwelling Unit and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his pet. The tethering of pets in any area outside an Owner's fenced patio does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet

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J. J. O'Connell
HANSBERRY CEMETERY RECORDS

which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Project within ten (10) days after written notice from the Board to the respective Owner to do so.

- (vi) All rubbish, trash or garbage shall be stored in closed sanitary containers in areas designated by the Corporation, shall be regularly removed from the premises, and shall not be allowed to accumulate on any part of the Lot. Trash may be stored in enclosed containers provided by the Corporation for that purpose. All clotheslines shall be confined to patio areas and shall be below the height of the patio fence. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed so as to be visible from any part of the Limited Common Area associated with a particular Dwelling Unit. Such Limited Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.
- (vii) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on and within the Project, except those home occupations which are permitted by applicable zoning regulations in Hancock County, Indiana.
- (viii) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Dwelling Unit or Limited Common Area associated therewith by an Owner without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Project in connection with any unsold or unoccupied Dwelling Units.
- (ix) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the General or Limited Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of such Common Area.
- (x) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 1 ton), motorcycles, mini-bikes, or mopeds shall be permitted, parked or stored anywhere within the Project except as otherwise specifically permitted by the Board. No repair work shall be done on the Lot on any vehicles, including passenger automobiles.
- (xi) No Owner shall be allowed to plant trees, landscape or do any gardening in any of its Limited Common Area, except with express permission from the Board.
- (xii) Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.
- (xiii) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.
- (xiv) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

RECORDS & COMMUNITY RECORDS
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C. J. [Signature]

- (xv) No motorized boating or sailboats shall be permitted on the Lake.
- (xvi) Private dock facilities may not be installed on or to the Lake.
- (xvii) No swimming shall be permitted on the Lake.
- (xviii) Any fishing from the Lake shall occur entirely from the banks of the Lake, as regulated by the Association.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Project (other than individual Dwelling Units and Lots owned by Persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Project at any time.

(b) Occupancy Restrictions

EACH CONVEYANCE OF A DWELLING UNIT IS SUBJECT TO THE RESTRICTIVE OCCUPANCY COVENANT THAT NO ONE UNDER THE AGE OF FIFTY-FIVE (55) SHALL OCCUPY SAID DWELLING UNIT EXCEPT:

- A LIVE IN CARETAKER OR
- HANDICAPPED CHILD OR CHILDREN OR
- A SPOUSE UNDER THE AGE OF 65 YEARS

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UNLESS APPROVED BY A MAJORITY OF THE VOTING MEMBERS OF THE ASSOCIATION. THIS RESTRICTION SHALL BE A COVENANT RUNNING WITH THE LAND ON WHICH THE DWELLING UNIT IS SITUATED.

21. Amendment of Declaration.

- (a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:
- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
 - (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors of Owners having in the aggregate at least a majority of the votes of all Owners.
 - (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

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James W. O'Brien
 ANCHOR ENERGY RECORDS

- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than fifty percent (50%) in the aggregate of the votes of all Owners. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (v) Special Amendments. No amendment to this Declaration shall be adopted which changes (a) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area or Dwelling Units in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 14 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Dwelling Unit, without, in each any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.
- (vi) Additional Special Amendments. No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area and Dwelling Units, or (3) right to use the Limited Common Area, or (4) annexation of property to Apple Lake Estates, or (5) termination of the applicability of this Declaration, or (6) any provisions which are for the express benefit of Mortgagees without the consent of at least sixty-six and two-thirds percent (66-2/3%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least fifty percent (50%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages.
- (vii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Hancock County, Indiana, and such amendment shall not become effective until so recorded.
- (viii) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.
- (b) By Declarant. Declarant hereby reserves the right, so long as Declarant or any entity related to Declarant owns any Lot or Dwelling Unit within and upon the Project, to make any amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Declarant, including without limitation: to bring Declarant or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental

Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

23. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Dwelling Unit or the Limited Common Area associated with such Dwelling Unit.

24. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

25. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Dwelling Unit.

26. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

27. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

28. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

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James H. O'Brien
HAWAIIAN SOCIETY RECORDS

EXHIBIT "A"

OWNERSHIP IN THE DWELLING UNIT, WHICH IS AND SHALL REMAIN REAL PROPERTY LOCATED ON A PART OF LOT _____ IN APPLE LAKE ESTATES, A SUBDIVISION IN HANCOCK COUNTY, INDIANA, AS PER PLAT THEREOF RECORDED _____, 1995, AS INSTRUMENT NO. _____, IN THE OFFICE OF THE RECORDER OF HANCOCK COUNTY, INDIANA, AND BEING MORE SPECIFICALLY DESCRIBED AS FOLLOWS: THE DWELLING UNIT LOCATED ABOVE AND OVER THE FOLLOWING REAL ESTATE

(LEGAL DESCRIPTION)

SAID DESCRIPTION HAVING BEEN DENOTED ON THE SURVEY ATTACHED HERETO AS EXHIBIT "A"

PLUS THE RIGHTS AND LIABILITIES, INCLUDING, BUT NOT LIMITED TO GENERAL AND LIMITED COMMON AREA, ALL AS DEFINED IN THE DECLARATION OF COVENANTS AND RESTRICTIONS OF APPLE LAKE ESTATES PROPERTY OWNERSHIP RECORDED ON SEPTEMBER _____, 1995 AS INSTRUMENT NO. _____ IN THE OFFICE OF THE RECORDER OF HANCOCK COUNTY, INDIANA.

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Jane W. O'Brien
HANCOCK COUNTY RECORDER

**FIRST AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS
OF APPLE LAKE ESTATES PROPERTY OWNERSHIP**

WHEREAS, Apple Lake Estates Homeowners Association, Inc. desiring to put forth certain proposed changes to the Declaration of Covenants and Restrictions of Apple Lake Estates Property Ownership, as recorded in the Office of the Hancock County Recorder on September 18, 1995, under Instrument No. 9507669, for vote by its membership; and

WHEREAS, Apple Lake Estates Homeowners Association, Inc. conducted a meeting of its membership, pursuant to Covenant and Restriction No.21 of the aforementioned Declaration of Covenants and Restrictions, on the 24~~th~~ day of August, 2002; and

WHEREAS, Apple Lake Estates Homeowners Association, Inc., by its membership, did vote to make certain changes to the Declaration of Covenants and Restrictions of Apple Lake Estates Property Ownership.

NOW, THEREFORE, the following changes are submitted as the First Amendment to the Declaration of Covenants and Restrictions of Apple Lake Estates Property Ownership:

20. Covenants and Restrictions (Use & Occupancy Restrictions).

(a) Use Restrictions

Paragraph (viii) That all reference to "for rent" or "for lease" is hereby deleted from this paragraph.

Paragraph (xiii) This paragraph is hereby changed to read:

"No Owner may rent or lease his/her Dwelling Unit".

Paragraph (xiv) This Paragraph as it presently reads is removed in its entirety. It is hereby replaced by the following:

"No Owner may own more than one (1) Dwelling Unit in Apple lake Estates, at the same time; unless one (1) is legitimately for sale at a sellable price, and with written Board approval, and provided that while for sale is not occupied".

All other terms and conditions of the above referenced Declaration of Covenants And Restrictions are to remain unchanged.

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HANCOCK COUNTY RECORDER
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SECOND AMENDMENT
TO THE
DECLARATION OF COVENANTS AND RESTRICTIONS
OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP

This Instrument Prepared By:
Apple Lake Estates Homeowners Association
Board of Directors
Under Counsel of:
MILO G. GRAY, Jr.
Attorney at Law
426 West Walnut St.
Greenfield, IN. 46140

Apple Lake Estates
Homeowners Association
426 West Walnut St.
Greenfield, IN 46140
853-6217

FOREWARD:

This document was prepared by the Board of Directors of The Apple Lake Estates Homeowners Association for the purpose of eliminating the confusing references to the advantages of the Project Developer, initially referred to as "Declarant". The areas of concern were in voting, replacing board members, membership classes, utility easements, management agents and renting or leasing units.

This second amendment is to succeed the initial Declarations of Covenants and Code of By Laws. Most paragraphs are identical to the original documents but are under new numerical headings. This amendment is to be the legal document of reference in instances of dispute.

This Second Amendment was approved by Thirty (30) of the Thirty five (35) Owners voting at the Seventh Annual Meeting held on August 16, 2003 as recorded in the minutes of that meeting.

Don Schlegel
Don Schlegel, Secretary

Date 8 August 2004

DECLARATION OF COVENANTS AND RESTRICTIONS OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP

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**SECOND AMENDMENT
TO DECLARATION OF COVENANTS AND RESTRICTIONS
OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP**

**THIS AMENDMENT TO THE DECLARATION made this 16th Day of August 2003
by THE APPLE LAKE ESTATES HOMEOWNERS ASSOCIATION INC., an
INDIANA CORPORATION**

WITNESSETH:

WHEREAS, the following facts are true:

A. THE CORPORATION is the sole owner in fee simple title to certain real estate located in Hancock County, Indiana, more particularly described in the attached Exhibit "A", which are incorporated herein by reference and is hereinafter referred to as "Project".

B. THE CORPORATION by execution of this Declaration assures that all properties which are conveyed by **THE CORPORATION** and which are a part of the "Project" shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the "Project" and be binding upon all parties having any right, title or interest in the "Project", or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, Therefore, **THE CORPORATION** hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- a) "**Articles**" or "**Articles of Incorporation**" means the Articles of Incorporation of the Apple Lake Homeowners Association.
- b) "**Board of Directors**" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- c) "**Building**" means any one of the twenty-one (21) separated structures each of which has two Dwelling Units divided by a party wall as hereinafter defined.
- d) "**By-Laws**" shall mean the By-Laws of the Corporation and shall provide for the election of Directors and Officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.
- e) "**Common Area**" The Common Area shall include all of the real estate described in Exhibit "A" (excluding dedicated right-of-way for public

streets within the "Project"), some of which will be hereafter delineated General or Limited common area as herein defined Limited Common.

General Common Area refers to those common areas available to all residents, and guest of residents, and owners of Buildings within the "Project". Limited Common Area refers to areas that are limited in use to a specific Building within the "Project". Notwithstanding the above, any use of the Common Areas will be subject to Rules and Regulations herein and as promulgated and enacted by the Board of Directors.

The Common Areas include these highlights:

- Perimeter fence at or near the North, South and East property lines of the Project.
- Lake (Substantially as depicted on the recorded Print of the Project). This Lake will provide an aesthetic water component within the project while also serving as a part of the surface water needs of the Project. No representation is made by the Corporation as to the water level to be maintained within the Lake. A gazebo type structure is constructed next to the lake. The right and limitations of use and maintenance thereof shall be determined by the Association as hereinafter detailed.

Limited Common Areas

Each platted Lot within the Project shall be designated limited Common Area. The centerline of the party wall within the Building on a given Lot when extended to the property lines of a Lot will, for descriptive and limited use purposes, establish an A & B component to the Building and Lot so that the occupant of the A component of the Building will have exclusive use of the Common Area of the A component of the Lot and the B component of the Building having the equivalent exclusive use of the B component of the Lot.

f) "**Common Expense**" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and the improvements therein and utilities serving said improvements; the costs of maintaining those portions of the Buildings hereinafter detailed, and all sums logically associated thereto.

g) "**Corporation**" means Apple Lake Estates Homeowners Associations, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 8 of this Declaration; such Corporation being more particularly described in Paragraph 8 of this Declaration.

h) "**Dwelling Unit**" means one of the two living units located within a given Building upon a given Lot.

i) **"Lot"** means any plot of ground designated as such upon the recorded Final Plat of the Project.

j) **"Member"** means a member of the Corporation.

k) **"Mortgagee"** means the holder of a first mortgage lien on the Dwelling Unit.

l) **"Owner"** means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Dwelling Unit.

2. Declaration. The Corporation hereby expressly declares that the Project or any portion thereof shall be held, conveyed and transferred in accordance with the provisions of this declaration.

3. Description of the Project. The Project is comprised of 21 Lots and has one Building per Lot, and therefore a maximum of 42 Dwelling Units. The buildings are constructed on The Limited Common Areas. The total of all of the General and Limited Common Area of the Project is all of the real estate of the Project less all dedicated right-of-way for the public streets within the Project. The Common Area and the size of the Lots are as designated on the Final Print of Apple Lake Estates. The Final Plat and Legal Description having been filed in The Hancock Records Office September 18, 1995, Cab B/ Slide 260 / 95-7670

4. Ownership of Common Area. Title to the Common Area shall be held by the Corporation for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to each Lot, subject to the provisions of this Declaration and subject to the limitation in use for Limited Common Areas, including but not limited to, the following:

a) The right of the Corporation to charge reasonable admission and other fees for use of any facility within the General Common Area.

b) The right of the Corporation to suspend any Member from the right to use any facility within the General Common Area for any period during which any assessment against such Member's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.

c) The right of the Corporation or its Board of Directors to determine the time and manner of use of facilities within the Common Area, if any, by the Members.

d) The right of the Corporation to adopt such rules and regulations regarding the General and Limited Common Area as it deems necessary as provided in Paragraph 9(g).

5. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family.

6. Patios and Patio Screening Walls (if any) and off street Parking Space. Each Dwelling Unit shall have the exclusive right to use the driveways and sidewalks exclusively located within the Limited Common Area of the Lot serving the Dwelling Unit in that portion of the Building and the non-exclusive right to use the sidewalks and driveways serving more than one Lot, whether or not such sidewalks or driveways are part of the Lot or located in the Common Area. Such rights to use shall pass with title to the Dwelling Unit even though not expressly mentioned in the document passing title. Each Dwelling Unit shall have the exclusive right to use the patios exclusively serving such Owner's portion of the Lot on which the Dwelling Unit is situated irrespective of such improvements being in the Owner's Limited Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

7. Easement for Utilities. An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephone and electricity within the Project; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed or approved by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment within the Project and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units. In the event any utility furnishing service should request a specific easement by a separate recordable document, the Board of Directors shall have the right to grant such easement within the Project, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement for the Project. An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

8. Corporation: Membership: Voting; Functions.

a) **Membership in Corporation.** Each Owner of a Dwelling Unit which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any person who holds the interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

b) **Voting Rights.** The Corporation shall have one class of membership, with the following voting rights:

Members shall be owners. A member shall be entitled to one (1) vote for each dwelling unit of which such member is the owner with respect to each matter submitted to a vote of members upon which the members are entitled to vote. When more than one (1) person constitutes the owner of a particular dwelling unit, all such persons shall be members of the Corporation, but all of such persons shall have only one (1) vote for such dwelling unit, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such dwelling unit. When an ownership is held by a trust or an immediate family member for the benefit of the resident the owner of record can proxy to the resident their one (1) vote on any and all business coming before an association meeting.

(c) **Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

9. Board of Directors.

a) **Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he/she is, or is deemed in accordance with this Declaration to be an Owner.

b) **Terms.** The initial board of directors were elected for staggering terms: One (1) for a one year term, two for two year terms and two for three year terms. At the second annual meeting one director was elected for a three-year term. At the third annual meeting two directors were elected for three-year terms. At all following annual meetings the director positions with expiring terms shall be elected for three-year terms. In the event of any vacancy or vacancies occurring in the board for any reason or cause whatsoever prior to the next annual meeting the remaining Board shall appoint an owner to fill that position until the next annual meeting at which a director or directors shall be elected to fill the remaining term created by the vacancy. If a director is removed in accordance with subparagraph, (e) of this paragraph the replacement director shall be elected by a vote of the owners.

c) **Additional Qualifications.** Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity holding the dwelling unit for the benefit of the relative resident, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

d) **Term of Office and Vacancy.** Subject to the provisions of subparagraph (b) of this Paragraph 9, at least one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation.

e) **Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the owners duly called and constituted for such purpose. In such case, his/her successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

f) **Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Project, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the

maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of regular and special assessments collected by the Corporation. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the vote and fifty-one percent (51%) of the vote of Mortgagees registered with the Corporation. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(i) maintenance of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, Security service or security system;

(ii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the General Common Areas, and such exterior portions of the Dwelling Units as hereinafter designated in this Declaration. Maintenance of lawns shall include but shall not be limited to the fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Developer without any duty to water any such planting. It shall not include the care and maintenance of shrubs, trees which were not planted by the Developer, including flowers or other plants, within the Limited Common Area of any Lot.

(iii) maintenance of lawns within Limited Common Areas consisting of two (2) fertilizations per year, shrub trimming of once per year and the cleaning of gutters at least once per year, however, any watering of grass and/or plantings and any reseeding of grass within the Limited Common Areas shall be the responsibility of the Owner to whom the Common Area is limited;

(iv) snow removal (but no ice removal), if funding exists, for the removal of snow from driveways and sidewalks and porches to the Dwelling Units within the Limited Common Areas if in the Board's sole determination the accumulation of snow justifies such removal;

(v) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;

(vi) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;

(vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year;

(viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;

(ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

(x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area, and

(xi) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, a financial statement for the immediately preceding fiscal year.

g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

(i) to employ a Managing Agent to assist the Board in performing its duties;

(ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services a may be necessary in the judgment of the Board of Directors;

(iii) to employ legal counsel, architects, contractors, accountants and others as in the judgement of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) to open and maintain a bank account or accounts in the name of the Corporation;

(vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the General and Limited Common Areas within the Project (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

(viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project known as Apple Lake Estates; and

(ix) to enter the Dwelling Unit of any Owner in case of any emergency whether the Owner is present at the time or not and in the case of non-emergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.

h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.

(i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

i) **Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

j) **Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

k) **Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, their heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that such person is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by such person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relating to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of such Director's duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of the Director's duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render

advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that the Director failed or neglected to attend a meeting or meetings of the Board of Directors.

1) **Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

10. **Real Estate Taxes.** Real estate taxes are to be separately assessed for each Dwelling Unit only (excludes Limited Common Area associated with that Dwelling Unit) and taxed to each such Dwelling Unit owner. The General and Limited Common Areas are to be separately assessed from the Dwelling Unit and taxed to the Association. In the event that for any year the real estate taxes are not so separately assessed and instead are taxed as a whole, then each Owner shall pay his proportionate share of the real estate taxes assessed for all of the Dwelling Unit, which shall be the ratio that the square footage that a given Dwelling Unit bears to the total square footage of all of the Dwelling Unit included in the tax statement. Any real estate taxes or other assessments, which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

11. **Utilities.** Each Owner shall pay for his own utilities, which are separately metered. Utilities not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

12. **Maintenance, Repairs and Replacements.** The Owner of each Lot shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs, decorating and replacements within such Owner's residence, including the heating and air conditioning system (consisting of the air conditioner pad, piping, wiring, ductwork, and caulking/repairs to the exit hole(s) in foundation wall), any partitions and interior walls; for the maintenance, repair and replacement of all windows in his or her residence, all doors leading into the residence (this shall consist

of all entry doors including storm doors, enclosed atrium doors, and the garage door all door locks, frames, door bells, hinges, hardware, garage door tracks, springs, pulleys, openers and all other pertinent equipment). In addition to the aforementioned maintenance responsibilities the Board of Directors has promulgated rules and regulations which assign the maintenance responsibility of the Limited Common Areas to the Lot Owner as follows:

Decks and exterior handrails; patio wall dividers, fences and gates; decorative porch, patio, yard and flood lights; telephone cable, television cable, electrical wiring, gas lines, plumbing lines, sump pumps and waterlines; exterior electrical outlet, exterior and interior faucets for hose, concrete garage slab and concrete inside fenced patio area, also the landscaping inside this Limited Common Area and patio.

The Association shall provide exterior maintenance upon the buildings constructed upon the Lots and on the Common Area adjacent thereto as follows: paint, repair, replace, maintain and care for roofs, gutters, downspouts, exterior building surfaces, such exterior building surfaces shall not include windows or glass surfaces (except glass in patio doors UNLESS such glass in the patio doors has been replaced and or upgraded subsequent to the purchase), and skylights. Nor shall it include doors and doorways and/or window frames; and other exterior improvements, lawns, shrubs and trees. The Association will remove snow (not ice) from sidewalks and driveways only. Such maintenance shall be provided at regular intervals pursuant to a reasonable schedule to be determined by the Association, and at other times in the case of an emergency.

In the event that the need for any such maintenance or repair is caused through the willful or negligent act of the Owner, or his or her family, guests, or invitees, the cost of such maintenance or repairs shall be recoverable through a special assessment added to the Regular Monthly Assessment to which such Lot is subject.

Notwithstanding any obligation or duty of the corporation to repair or maintain any Dwelling Unit or the Common Area, if due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If the Board of Directors grants a particular owner of a Dwelling Unit the right to place within its associated Limited Common Area a mini barn, fence, vegetable garden, additional trees and shrubs over those initially planted at the first conveyance of a Deed to an owner for a particular Dwelling Unit and as part of the grant that an additional assessment is appropriate because it impedes the Association maintenance of this Limited Common Area, then this additional assessment shall be paid in a manner and time as specified by the Board Of Directors. If not paid by such Owner upon demand by the Corporation the cost of repairing such damage and/or the

charge for the additional assessment established by the Board of Directors shall be added to and become a part of the assessment to which such Owner's Dwelling Unit is subject.

If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Project is subject to this Declaration each Owner, by his acceptance of a deed to any Dwelling Unit, irrevocably grants to the Corporation, its agents and employees, the right to enter in and upon the Dwelling Unit owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

13. Architectural Control.

a) **Purposes.** The Board of Directors shall regulate the external design, appearance, use, location and maintenance of the Dwelling Unit and of improvements with the Limited Common Area serving the Dwelling Unit in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

b) **Conditions.** No improvements, alterations, repairs, change of colors, excavation, changes in grade, additional landscaping, or other work which in any way alters the exterior of a Dwelling Unit, or the improvements located within the Limited Common Area serving a given Dwelling Unit from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee to any Owner shall be made or done without the prior approval of the Board of Directors. Except as otherwise expressly provided in this Declaration, no building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Board of Directors.

c) **Maintenance of Architectural Control.** The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area including the upkeep of common fences, driveways, lawns and plantings without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

14. Party Walls.

a) **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of any Dwelling Unit within the Project and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

c) **Destruction by Fire or other Causality.** If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

d) **Weatherproofing.** Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

e) **Right of Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

f) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 15, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore from another party the Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

15. Assessments.

a) **Annual Accounting.** Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a public accountant or firm of accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

b) **Proposed Annual Budget.** Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration, which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion, Hancock and surrounding counties, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no

annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget, or at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

c) **Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be the same amount for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessment shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget.

(i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited; provided, however,

that if an Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner by first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Dwelling Unit as of the First day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner who has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as Owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 17 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be mailed or delivered may rely thereon and shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

d) **Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that such assessment shall have the assent of two-thirds (2/3rds) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the

cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

e) The Corporation may enter into a management agreement in accordance with the provisions of Paragraph 10 of this Declaration. So long as such management agreement, or similar agreement, remains in effect, the common expenses and regular assessments shall be paid by the owners to the management agent.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 10 of this Declaration and to adhere to and abide by the same.

The monthly regular assessment shall be established by the Board of Directors based upon the budget approved at the Annual Meetings. This assessment shall commence on the first of the month after the date of the annual meeting. Such monthly charge shall defray the owner's obligation for his share of common expenses or shall be the owner's entire regular assessment.

f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments in such event the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In actions to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board' for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses

of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by any National Bank in Marion County, Indiana, selected by the Board of Directors, to its largest and best corporate customer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Dwelling Unit to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefore, no such sale, transfer or conveyance shall relieve the Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Dwelling Unit from which it arose).

16. Mortgages.

a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its

borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

b) **Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16(b) hereof.

c) **Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums.** Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.

d) **Notice of Condemnation or Casualty Loss.** Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Apple Lake Estates or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

e) **Notice to Insurers and Guarantors.** Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

17. Insurance.

a) **Casualty Insurance.** The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insuring all of the Dwelling Units and the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Dwelling Units and Common Area and which includes in said coverage the replacement in the event of casualty of Dwelling Units floor and wall coverings. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage

shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Common Area directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall be solely responsible for loss or damage to the contents of his Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall covers and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere within the Project and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere within the Project. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

b) Public Liability Insurance. The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of person and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors,

any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Project, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.

c) **Other Insurance.** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

d) **General Provisions.** The premiums for all insurance herein above described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notice of meeting of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to

such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Indiana Not-For-Profit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

e) **Insurance by Owners.** Each Owner shall have the right to purchase such additional insurance at his own expense, as he may deem necessary.

f) **Condemnation Awards.** All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

18. **Casualty of Dwelling Units.**

a) **Restoration of Dwelling Units.**

(i) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose.

(ii) If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

(iii) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(iv) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

(v) The proceeds of insurance collected on 'account of any such casualty, and the sums received by the Board of Directors from collections of assessments against the Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(1) The construction fund shall be disbursed in payment of such costs upon the selection of a general contractor employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The general contractor shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, material men, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

(2) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.

(3) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums

shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

b) **Restoration of Common Area.** In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

19. Covenants and Restrictions (Use & Occupancy Restrictions). The following covenants and restrictions on the use and enjoyment of the Dwelling Units and General and Limited Common Areas shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Corporation. Present or future owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation.

a) Use Restrictions

(i) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family per Dwelling Unit.

(ii) Nothing shall be done or kept in any Dwelling Unit or on the Common Area which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(iii) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or the Common Area. The Board of Directors determination as to what is a nuisance shall be conclusive.

(iv) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or things shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board of Directors

(v) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner or kept within a fenced area of the Limited Common Area associated with a particular Dwelling Unit and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his pet. The tethering of pets in any area outside an Owner's fenced patio does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Project within ten (10) days after written notice from the Board to the respective Owner to do so.

(vi) All rubbish, trash or garbage shall be stored in closed sanitary containers in areas designated by the Corporation, shall be regularly

removed from the premises, and shall not be allowed to accumulate on any part of the Lot. Trash may be stored in enclosed containers provided by the Corporation for that purpose. All clotheslines shall be confined to patio areas and shall be below the height of the patio fence. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed so as to be visible from any part of the Limited Common Area associated with a particular Dwelling Unit. Such Limited Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

(vii) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on and within the Project, except those home occupations which are permitted by applicable zoning regulations in Hancock County, Indiana.

(viii) No "for sale" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Dwelling Unit or Limited Common Area associated therewith by an Owner without the prior consent of the Board; provided, however, that the right is reserved by the Board to place or allow to be placed "for sale" signs on or about the Project in connection with any unsold or unoccupied Dwelling Units. No Owner may rent or lease his dwelling for any intents or purposes.

(ix) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the General or Limited Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of such Common Area.

(x) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 1 ton), motorcycles, mini-bikes, or mopeds shall be permitted, parked or stored anywhere within the Project except as otherwise specifically permitted by the Board. No repair work shall be done on the Lot on any vehicles, including passenger automobiles.

(xi) No Owner shall be allowed to plant trees, landscape or do any gardening in any of its Limited Common Area, except with express permission from the Board.

(xii) Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(xiii) No owner may own more than one (1) Dwelling Unit at the same time, unless one (1) is legitimately for sale at a sellable price, and with written Board approval, provided that, while for sale, is not occupied.

(xv) No motorized boating or sailboats shall be permitted on the Lake.

(xvi) Private dock facilities may not be installed on or to the Lake.

(xvii) No swimming shall be permitted on the Lake.

(xviii) Any fishing from the Lake shall occur entirely from the banks of the Lake, as regulated by the Corporation

b) Occupancy Restrictions

EACH CONVEYANCE OF A DWELLING UNIT IS SUBJECT TO THE RESTRICTIVE OCCUPANCY COVENANT THAT NO ONE UNDER THE AGE OF FIFTY-FIVE (55) SHALL OCCUPY SAID DWELLING UNIT EXCEPT:

- A LIVE IN CARETAKER OR
- HANDICAPPED CHILD OR CHILDREN OR
- A SPOUSE UNDER THE AGE OF 55 YEARS

UNLESS APPROVED BY A MAJORITY OF THE VOTING MEMBERS OF THE ASSOCIATION. THIS RESTRICTION SHALL BE A COVENANT RUNNING WITH THE LAND ON WHICH THE DWELLING UNIT IS SITUATED.

20. Amendment of Declaration.

a) **Generally.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) **Notice.** Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors of Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than fifty percent (50%) in the aggregate of the votes of all Owners. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (a) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area or Dwelling Units in the event of fire or any other casualty or disaster, (4) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Dwelling Unit, without, in each any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) **Additional Special Amendments.** No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area and Dwelling Units, or (3) right to use the Limited Common Area, or (4) annexation of property to Apple Lake Estates, or (5) termination of the applicability of this Declaration, or (6) any provisions which are for the express benefit of Mortgagees without the consent of at least sixty-six and two-thirds percent (66-2/3%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least fifty percent (50%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages.

(vii) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Hancock County, Indiana, and such amendment shall not become effective until so recorded.

(viii) **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

21. Acceptance and Ratification. All present and future Owners, Mortgagees, and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Dwelling Unit as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage. All persons, corporations, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit in any manner shall be subject to the declaration, the Articles of Incorporation, By Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

22. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that or any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Dwelling Unit or the Limited Common Area associated with such Dwelling Unit.

23. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

24. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Dwelling Unit.

25. **Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

26. **Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

27. **Interpretation.** The captions and titles of the various articles, section, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

THIRD AMENDMENT
TO THE
DECLARATION OF COVENANTS AND RESTRICTIONS
OF

APPLE LAKE ESTATES PROPERTY OWNERSHIP

REFERENCE # 950007669

This Instrument Prepared By:
Apple Lake Estates Homeowners Association
Board of Directors
Under Counsel of:
MILO G. GRAY, Jr.
Attorney at Law
426 West Walnut St.
Greenfield, IN 46140

DECLARATION OF COVENANTS AND RESTRICTIONS OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP

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**SECOND AMENDMENT
TO DECLARATION OF COVENANTS AND RESTRICTIONS
OF
APPLE LAKE ESTATES PROPERTY OWNERSHIP**

**THIS AMENDMENT TO THE DECLARATION made this 16th Day of August 2003
by THE APPLE LAKE ESTATES HOMEOWNERS ASSOCIATION INC., an
INDIANA CORPORATION**

WITNESSETH:

WHEREAS, the following facts are true:

A. **THE CORPORATION** is the sole owner in fee simple title to certain real estate located in Hancock County, Indiana, more particularly described in the attached Exhibit "A", which are incorporated herein by reference and is hereinafter referred to as "Project".

B. **THE CORPORATION** by execution of this Declaration assures that all properties which are conveyed by **THE CORPORATION** and which are a part of the "Project" shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the "Project" and be binding upon all parties having any right, title or interest in the "Project", or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, Therefore, **THE CORPORATION** hereby makes this Declaration as follows:

1. **Definitions.** The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

- a) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Apple Lake Homeowners Association.
- b) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- c) "Building" means any one of the twenty-one (21) separated structures each of which has two Dwelling Units divided by a party wall as hereinafter defined.
- d) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of Directors and Officers and other governing officials of the Corporation. A copy of the By-Laws is incorporated herein by reference.
- e) "Common Area" The Common Area shall include all of the real estate described in Exhibit "A" (excluding dedicated right-of-way for public

streets within the "Project"), some of which will be hereafter delineated General or Limited common area as herein defined Limited Common.

General Common Area refers to those common areas available to all residents, and guest of residents, and owners of Buildings within the "Project". Limited Common Area refers to areas that are limited in use to a specific Building within the "Project". Notwithstanding the above, any use of the Common Areas will be subject to Rules and Regulations herein and as promulgated and enacted by the Board of Directors.

The Common Areas include these highlights:

- Perimeter fence at or near the North, South and East property lines of the Project.
- Lake (Substantially as depicted on the recorded Print of the Project). This Lake will provide an aesthetic water component within the project while also serving as a part of the surface water needs of the Project. No representation is made by the Corporation as to the water level to be maintained within the Lake. A gazebo type structure is constructed next to the lake. The right and limitations of use and maintenance thereof shall be determined by the Association as hereinafter detailed.

Limited Common Areas

Each platted Lot within the Project shall be designated limited Common Area. The centerline of the party wall within the Building on a given Lot when extended to the property lines of a Lot will, for descriptive and limited use purposes, establish an A & B component to the Building and Lot so that the occupant of the A component of the Building will have exclusive use of the Common Area of the A component of the Lot and the B component of the Building having the equivalent exclusive use of the B component of the Lot.

f) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and the improvements therein and utilities serving said improvements; the costs of maintaining those portions of the Buildings hereinafter detailed, and all sums logically associated thereto.

g) "Corporation" means Apple Lake Estates Homeowners Associations, Inc., its successors and assigns, a not-for-profit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 8 of this Declaration; such Corporation being more particularly described in Paragraph 8 of this Declaration.

h) "Dwelling Unit" means one of the two living units located within a given Building upon a given Lot.

- i) "Lot" means any plot of ground designated as such upon the recorded Final Plat of the Project.
- j) "Member" means a member of the Corporation.
- k) "Mortgagee" means the holder of a first mortgage lien on the Dwelling Unit.
- l) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Dwelling Unit.

2. **Declaration.** The Corporation hereby expressly declares that the Project or any portion thereof shall be held, conveyed and transferred in accordance with the provisions of this declaration.

3. **Description of the Project.** The Project is comprised of 21 Lots and has one Building per Lot, and therefore a maximum of 42 Dwelling Units. The buildings are constructed on The Limited Common Areas. The total of all of the General and Limited Common Area of the Project is all of the real estate of the Project less all dedicated right-of-way for the public streets within the Project. The Common Area and the size of the Lots are as designated on the Final Print of Apple Lake Estates. The Final Plat and Legal Description having been filed in The Hancock Recorders Office September 18, 1995, Cab B/ Slide 260 / 95-7670

4. **Ownership of Common Area.** Title to the Common Area shall be held by the Corporation for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to each Lot, subject to the provisions of this Declaration and subject to the limitation in use for Limited Common Areas, including but not limited to, the following:

- a) The right of the Corporation to charge reasonable admission and other fees for use of any facility within the General Common Area.
- b) The right of the Corporation to suspend any Member from the right to use any facility within the General Common Area for any period during which any assessment against such Member's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Board's published rules and regulations.
- c) The right of the Corporation or its Board of Directors to determine the time and manner of use of facilities within the Common Area, if any, by the Members.

d) The right of the Corporation to adopt such rules and regulations regarding the General and Limited Common Area as it deems necessary as provided in Paragraph 9(g).

5. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family.

6. Patios and Patio Screening Walls (if any) and off street Parking Space. Each Dwelling Unit shall have the exclusive right to use the driveways and sidewalks exclusively located within the Limited Common Area of the Lot serving the Dwelling Unit in that portion of the Building and the non-exclusive right to use the sidewalks and driveways serving more than one Lot, whether or not such sidewalks or driveways are part of the Lot or located in the Common Area. Such rights to use shall pass with title to the Dwelling Unit even though not expressly mentioned in the document passing title. Each Dwelling Unit shall have the exclusive right to use the patios exclusively serving such Owner's portion of the Lot on which the Dwelling Unit is situated irrespective of such improvements being in the Owner's Limited Common Area. Such right to use shall pass with title to the Lot even though not expressly mentioned in the document passing title.

7. Easement for Utilities. An easement is granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephone and electricity within the Project; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed or approved by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment within the Project and to affix and maintain electrical and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units. In the event any utility furnishing service should request a specific easement by a separate recordable document, the Board of Directors shall have the right to grant such easement within the Project, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement for the Project. An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

8. Corporation: Membership; Voting; Functions.

a) **Membership in Corporation.** Each Owner of a Dwelling Unit which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Dwelling Unit ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Dwelling Unit; provided, however, that any person who holds the interest of an Owner in a Dwelling Unit merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

b) **Voting Rights.** The Corporation shall have one class of membership, with the following voting rights:

Members shall be owners. A member shall be entitled to one (1) vote for each dwelling unit of which such member is the owner with respect to each matter submitted to a vote of members upon which the members are entitled to vote. When more than one (1) person constitutes the owner of a particular dwelling unit, all such persons shall be members of the Corporation, but all of such persons shall have only one (1) vote for such dwelling unit, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such dwelling unit. When an ownership is held by a trust or an immediate family member for the benefit of the resident the owner of record can proxy to the resident their one (1) vote on any and all business coming before an association meeting.

(c) **Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated for it to perform under this Declaration.

9. Board of Directors.

a) **Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he/she is, or is deemed in accordance with this Declaration to be an Owner.

b) **Terms.** The initial board of directors were elected for staggering terms: One (1) for a one year term, two for two year terms and two for three year terms. At the second annual meeting one director was elected for a three-year term. At the third annual meeting two directors were elected for three-year terms. At all following annual meetings the director positions with expiring terms shall be elected for three-year terms. In the event of any vacancy or vacancies occurring in the board for any reason or cause whatsoever prior to the next annual meeting the remaining Board shall appoint an owner to fill that position until the next annual meeting at which a director or directors shall be elected to fill the remaining term created by the vacancy. If a director is removed in accordance with subparagraph, (e) of this paragraph the replacement director shall be elected by a vote of the owners.

c) **Additional Qualifications.** Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity holding the dwelling unit for the benefit of the relative resident, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

d) **Term of Office and Vacancy.** Subject to the provisions of subparagraph (b) of this Paragraph 9, at least one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation.

e) **Removal of Directors.** A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the owners duly called and constituted for such purpose. In such case, his/her successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

f) **Duties of the Board of Directors.** The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Project, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the

maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of regular and special assessments collected by the Corporation. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the vote and fifty-one percent (51%) of the vote of Mortgagees registered with the Corporation. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(i) maintenance of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, Security service or security system;

(ii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the General Common Areas, and such exterior portions of the Dwelling Units as hereinafter designated in this Declaration. Maintenance of lawns shall include but shall not be limited to the fertilizing, mowing and replanting when necessary of the grass; and the care, fertilizing, trimming, removal and replacement of trees planted by the Developer without any duty to water any such planting. It shall not include the care and maintenance of shrubs, trees which were not planted by the Developer, including flowers or other plants, within the Limited Common Area of any Lot.

(iii) maintenance of lawns within Limited Common Areas consisting of two (2) fertilizations per year, shrub trimming of once per year and the cleaning of gutters at least once per year, however, any watering of grass and/or plantings and any reseeding of grass within the Limited Common Areas shall be the responsibility of the Owner to whom the Common Area is limited;

(iv) snow removal (but no ice removal), if funding exists, for the removal of snow from driveways and sidewalks and porches to the Dwelling Units within the Limited Common Areas if in the Board's sole determination the accumulation of snow justifies such removal;

- (v) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (vi) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each owner simultaneously with delivery of the proposed annual budget for the current year;
- (viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
- (ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
- (x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area, and
- (xi) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, a financial statement for the immediately preceding fiscal year.

g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (i) to employ a Managing Agent to assist the Board in performing its duties;
- (ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(iii) to employ legal counsel, architects, contractors, accountants and others as in the judgement of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) to open and maintain a bank account or accounts in the name of the Corporation;

(vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the General and Limited Common Areas within the Project (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

(viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project known as Apple Lake Estates; and

(ix) to enter the Dwelling Unit of any Owner in case of any emergency whether the Owner is present at the time or not and in the case of non-emergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.

h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary.

(i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting: and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

i) **Compensation.** No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

j) **Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

k) **Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, their heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that such person is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by such person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relating to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of such Director's duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of the Director's duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render

advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that the Director failed or neglected to attend a meeting or meetings of the Board of Directors.

1) **Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

10. **Real Estate Taxes.** Real estate taxes are to be separately assessed for each Dwelling Unit only (excludes Limited Common Area associated with that Dwelling Unit) and taxed to each such Dwelling Unit owner. The General and Limited Common Areas are to be separately assessed from the Dwelling Unit and taxed to the Association. In the event that for any year the real estate taxes are not so separately assessed and instead are taxed as a whole, then each Owner shall pay his proportionate share of the real estate taxes assessed for all of the Dwelling Unit, which shall be the ratio that the square footage that a given Dwelling Unit bears to the total square footage of all of the Dwelling Unit included in the tax statement. Any real estate taxes or other assessments, which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

11. **Utilities.** Each Owner shall pay for his own utilities, which are separately metered. Utilities not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Corporation.

12. **Maintenance, Repairs and Replacements.** The Owner of each Lot shall furnish and be responsible for, at his or her own expense, all the maintenance, repairs, decorating and replacements within such Owner's residence, including the heating and air conditioning system (consisting of the air conditioner pad, piping, wiring, ductwork, and caulking/repairs to the exit hole(s) in foundation wall), any partitions and interior walls; for the maintenance, repair and replacement of all windows in his or her residence, all doors leading into the residence (this shall consist

of all entry doors including storm doors, enclosed atrium doors, and the garage door all door locks, frames, door bells, hinges, hardware, garage door tracks, springs, pulleys, openers and all other pertinent equipment). In addition to the aforementioned maintenance responsibilities the Board of Directors has promulgated rules and regulations which assign the maintenance responsibility of the Limited Common Areas to the Lot Owner as follows:

Decks and exterior handrails; patio wall dividers, fences and gates; decorative porch, patio, yard and flood lights; telephone cable, television cable, electrical wiring, gas lines, plumbing lines, sump pumps and waterlines; exterior electrical outlet, exterior and interior faucets for hose, concrete garage slab and concrete inside fenced patio area, also the landscaping inside this Limited Common Area and patio.

The Association shall provide exterior maintenance upon the buildings constructed upon the Lots and on the Common Area adjacent thereto as follows: paint, repair, replace, maintain and care for roofs, gutters, downspouts, exterior building surfaces, such exterior building surfaces shall not include windows or glass surfaces and skylights. Nor shall it include doors and doorways and/or window frames; and other exterior improvements, lawns, shrubs and trees. The Association will remove snow (not ice) from sidewalks and driveways only. Such maintenance shall be provided at regular intervals pursuant to a reasonable schedule to be determined by the Association, and at other times in the case of an emergency.

In the event that the need for any such maintenance or repair is caused through the willful or negligent act of the Owner, or his or her family, guests, or invitees, the cost of such maintenance or repairs shall be recoverable through a special assessment added to the Regular Monthly Assessment to which such Lot is subject.

Notwithstanding any obligation or duty of the corporation to repair or maintain any Dwelling Unit or the Common Area, if due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If the Board of Directors grants a particular owner of a Dwelling Unit the right to place within its associated Limited Common Area a mini barn, fence, vegetable garden, additional trees and shrubs over those initially planted at the first conveyance of a Deed to an owner for a particular Dwelling Unit and as part of the grant that an additional assessment is appropriate because it impedes the Association maintenance of this Limited Common Area, then this additional assessment shall be paid in a manner and time as specified by the Board Of Directors. If not paid by such Owner upon demand by the Corporation the cost of repairing such damage and/or the

charge for the additional assessment established by the Board of Directors shall be added to and become a part of the assessment to which such Owner's Dwelling Unit is subject.

If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Project is subject to this Declaration each Owner, by his acceptance of a deed to any Dwelling Unit, irrevocably grants to the Corporation, its agents and employees, the right to enter in and upon the Dwelling Unit owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

13. Architectural Control.

a) **Purposes.** The Board of Directors shall regulate the external design, appearance, use, location and maintenance of the Dwelling Unit and of improvements with the Limited Common Area serving the Dwelling Unit in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

b) **Conditions.** No improvements, alterations, repairs, change of colors, excavation, changes in grade, additional landscaping, or other work which in any way alters the exterior of a Dwelling Unit, or the improvements located within the Limited Common Area serving a given Dwelling Unit from its natural or improved state existing on the date such Dwelling Unit was first conveyed in fee to any Owner shall be made or done without the prior approval of the Board of Directors. Except as otherwise expressly provided in this Declaration, no building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Board of Directors.

c) **Maintenance of Architectural Control.** The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area including the upkeep of common fences, driveways, lawns and plantings without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

14. Party Walls.

a) **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of any Dwelling Unit within the Project and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

c) **Destruction by Fire or other Causality.** If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

d) **Weatherproofing.** Notwithstanding any other provision of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

e) **Right of Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

f) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 15, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore from another party the Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

15. Assessments.

a) **Annual Accounting.** Annually, after the close of each fiscal year of the Corporation and prior to the date of the annual meeting of the Corporation next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a public accountant or firm of accountants then servicing the Corporation, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

b) **Proposed Annual Budget.** Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration, which replacement reserve fund (if established) shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion, Hancock and surrounding counties, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no

annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget, or at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

c) **Regular Assessments.** The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling Unit, which shall be the same amount for each Dwelling Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Dwelling Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Dwelling Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessment shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Dwelling Unit shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. In the event the Regular Assessment for a particular fiscal year of the Corporation was initially based upon a temporary budget.

(i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

(ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited; provided, however,

that if an Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner by first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Dwelling Unit as of the First day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner who has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Dwelling Unit or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Dwelling Unit from payment of the Regular Assessment for such Dwelling Unit as finally determined, and such Owner and his successor as Owner of such Dwelling Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Corporation pursuant to Paragraph 17 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be mailed or delivered may rely thereon and shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

d) **Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that such assessment shall have the assent of two-thirds (2/3rds) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Dwelling Unit, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the

cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described in this Declaration.

e) The Corporation may enter into a management agreement in accordance with the provisions of Paragraph 10 of this Declaration. So long as such management agreement, or similar agreement, remains in effect, the common expenses and regular assessments shall be paid by the owners to the management agent.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 10 of this Declaration and to adhere to and abide by the same.

The monthly regular assessment shall be established by the Board of Directors based upon the budget approved at the Annual Meetings. This assessment shall commence on the first of the month after the date of the annual meeting. Such monthly charge shall defray the owner's obligation for his share of common expenses or shall be the owner's entire regular assessment.

f) Failure of Owner to Pay Assessments. No Owner may exempt himself from paying Regular Assessments and Special Assessments or from contributing toward the Common Expense or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of the Dwelling Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment or Special Assessment when due, the lien for such assessment on the Owner's Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Corporation as a mortgage on real property or as otherwise provided by law. Upon the failure of the owner to make timely payments of any Regular Assessment or Special Assessment when due the Board may in its discretion accelerate the entire balance of unpaid assessments in such event the Owner and any occupant of the Dwelling Unit shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Dwelling Unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular Assessments or Special Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In actions to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board' for and on behalf of the Corporation shall be entitled to recover from the Owner of the respective Dwelling Unit costs and expenses

of such action incurred (including, but not limited to, reasonable attorney's fees) and interest from the date such assessments were due until paid at the rate equal to the publicly announced prime interest rate then being charged by any National Bank in Marion County, Indiana, selected by the Board of Directors, to its largest and best corporate customer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Dwelling Unit to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior owner from personal liability therefore, no such sale, transfer or conveyance shall relieve the Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Dwelling Unit from which it arose).

16. Mortgages.

a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Dwelling Unit, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its

borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

b) **Notice of Unpaid Assessments.** The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Dwelling Unit, furnish to such Mortgagee or purchaser a statement setting the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Dwelling Unit, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Dwelling Unit shall not be liable for nor shall the Dwelling Unit conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 16(b) hereof.

c) **Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums.** Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediately reimbursement by the Corporation.

d) **Notice of Condemnation or Casualty Loss.** Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Apple Lake Estates or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

e) **Notice to Insurers and Guarantors.** Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

17. Insurance.

a) **Casualty Insurance.** The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insuring all of the Dwelling Units and the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Dwelling Units and Common Area and which includes in said coverage the replacement in the event of casualty of Dwelling Units floor and wall coverings. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage

shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Dwelling Unit to the damages of all Dwelling Units and Common Area directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

Each Owner shall be solely responsible for loss or damage to the contents of his Dwelling Unit however caused (including, but not limited to, all floor, ceiling and wall covers and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere within the Project and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere within the Project. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

b) **Public Liability Insurance.** The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of person and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors,

any committee of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Project, all Owners of Dwelling Units and all other persons entitled to occupy any Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Corporation.

c) **Other Insurance:** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to, workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

d) **General Provisions.** The premiums for all insurance herein above described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Corporation who is required to send notice of meeting of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a mortgagee pursuant to its mortgage in the case of distribution to

such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees if to do so would be in violation of the Indiana Not-For-Profit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

e) **Insurance by Owners.** Each Owner shall have the right to purchase such additional insurance at his own expense, as he may deem necessary.

f) **Condemnation Awards.** All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

18. **Casualty of Dwelling Units.**

a) **Restoration of Dwelling Units.**

(i) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose.

(ii) If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

(iii) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(iv) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

(v) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against the Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(1) The construction fund shall be disbursed in payment of such costs upon the selection of a general contractor employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The general contractor shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, material men, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

(2) Encroachments upon or in favor of Dwelling Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.

(3) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums

shall be distributed to the Owners of the Dwelling Units affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

b) **Restoration of Common Area.** In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Article, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as it existed immediately prior to the damage or destruction and with the same type of architecture.

19. Covenants and Restrictions (Use & Occupancy Restrictions). The following covenants and restrictions on the use and enjoyment of the Dwelling Units and General and Limited Common Areas shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Corporation. Present or future owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation.

a) Use Restrictions

(i) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family per Dwelling Unit.

(ii) Nothing shall be done or kept in any Dwelling Unit or on the Common Area which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof or on any Common Area. No Owner shall permit anything to be done or kept in his Dwelling Unit or on any of the Common Area which will result in a cancellation of insurance on any Dwelling Unit or any part of Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(iii) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or the Common Area. The Board of Directors determination as to what is a nuisance shall be conclusive.

(iv) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Dwelling Unit or placed on the outside walls of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or things shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board of Directors

(v) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner or kept within a fenced area of the Limited Common Area associated with a particular Dwelling Unit and an Owner shall be fully liable for any injury or damage to persons or property, including the Common Area, caused by his pet. The tethering of pets in any area outside an Owner's fenced patio does not constitute "attended". The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Project within ten (10) days after written notice from the Board to the respective Owner to do so.

(vi) All rubbish, trash or garbage shall be stored in closed sanitary containers in areas designated by the Corporation, shall be regularly

removed from the premises, and shall not be allowed to accumulate on any part of the Lot. Trash may be stored in enclosed containers provided by the Corporation for that purpose. All clotheslines shall be confined to patio areas and shall be below the height of the patio fence. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed so as to be visible from any part of the Limited Common Area associated with a particular Dwelling Unit. Such Limited Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

(vii) No industry; trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on and within the Project, except those home occupations which are permitted by applicable zoning regulations in Hancock County, Indiana.

(viii) No "for sale" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Dwelling Unit or Limited Common Area associated therewith by an Owner without the prior consent of the Board; provided, however, that the right is reserved by the Board to place or allow to be placed "for sale" signs on or about the Project in connection with any unsold or unoccupied Dwelling Units. No Owner may rent or lease his dwelling for any intents or purposes.

(ix) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same and to use and enjoy the General or Limited Common Area or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of such Common Area.

(x) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 1 ton), motorcycles, mini-bikes, or mopeds shall be permitted, parked or stored anywhere within the Project except as otherwise specifically permitted by the Board. No repair work shall be done on the Lot on any vehicles, including passenger automobiles.

(xi) No Owner shall be allowed to plant trees, landscape or do any gardening in any of its Limited Common Area, except with express permission from the Board.

(xii) Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(xiii) No owner may own more than one (1) Dwelling Unit at the same time, unless on (1) legitimately for sale at a sellable price, and with written Board approval, provided that while for sale, is not occupied.

(xiv) No motorized boating or sailboats shall be permitted on the Lake.

(xv) Private dock facilities may not be installed on or to the Lake.

(xvi) No swimming shall be permitted on the Lake.

(xvii) Any fishing from the Lake shall occur entirely from the banks of the Lake, as regulated by the Corporation.

(xviii) Fishing is permitted by residents and family members only with the requirement that a resident member be at home while family members are fishing. There is to be no fishing after dark. All children must be accompanied by an adult at the Lake.

b) **Occupancy Restrictions**

EACH CONVEYANCE OF A DWELLING UNIT IS SUBJECT TO THE RESTRICTIVE OCCUPANCY COVENANT THAT NO ONE UNDER THE AGE OF FIFTY-FIVE (55) SHALL OCCUPY SAID DWELLING UNIT EXCEPT:

- A LIVE IN CARETAKER OR
- HANDICAPPED CHILD OR CHILDREN OR
- A SPOUSE UNDER THE AGE OF 55 YEARS

UNLESS APPROVED BY A MAJORITY OF THE VOTING MEMBERS OF THE ASSOCIATION. THIS RESTRICTION SHALL BE A COVENANT RUNNING WITH THE LAND ON WHICH THE DWELLING UNIT IS SITUATED.

20. **Amendment of Declaration**

a) Generally. Except as otherwise provided in the Declaration, amendments to this Declaration shall be proposed and adopted in the follow manner:

(iii) **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(iv) **Adoption.** Any proposed amendment to this Declaration must be approved by a vote of not less than fifty percent (50%) in the aggregate of the votes of all Owners. In the event any Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) **Special Amendments.** No amendment to this Declaration shall be adopted which changes (a) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 18 with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 19 of this Declaration with respect to reconstruction or repair of the Common Area or Dwelling Units in the event of fire or any other casualty or disaster, (4) the provisions of Paragraph 16 of this Declaration with respect to the commencement of assessments on any Dwelling Unit, without, in each any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) **Additional Special Amendments.** No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area and Dwelling Units, or (3) right to use the Limited Common Area, or (4) annexation of property to Apple Lake Estates, or (5) termination of the applicability of this Declaration, or (6) any provisions which are for the express benefit of Mortgagees without the consent of at least sixty-six and two-thirds percent (66-2/3%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least fifty percent (50%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages.

(vii) **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the Office of the Recorder of Hancock County, Indiana, and such amendment shall not become effective until so recorded.

(viii) **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

21. **Acceptance and Ratification.** All present and future Owners, Mortgagees, and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Dwelling Unit as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage. All persons, corporations, partnership, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit in any manner shall be subject to the declaration, the Articles of Incorporation, By Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

22. **Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that or any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Dwelling Unit or the Limited Common Area associated with such Dwelling Unit.

23. **Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

24. **Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Dwelling Unit.

25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

26. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

27. Interpretation. The captions and titles of the various articles, section, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Third Amendment to Declaration of Covenants and Restrictions

Of

APPLE LAKE ESTATES PROPERTY OWNERSHIP

In compliance with the Declaration of covenants and restrictions of Apple Lake Estates property ownership, the owner of the corporation approved the attached third amendment to Declaration, dated August 18, 2007, by a majority vote of owners. As required by the covenants at least 66 2/3% of the vote of the owners.

The final vote tally was as follows:

81% of the owners approved the third amendment

In accordance with said vote, the third amendment is hereby approved and will be recorded in Hancock County, State of Indiana.